

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Joseph Cestaro,

Plaintiff,

-v-

Michael Prohaska and  
Construction And General  
Building Laborers Local 79,

Defendants.

22-cv-9444 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.:

Following consideration of the parties' written submissions and oral argument held on 12/22/22, the Court hereby grants in part and denies in part defendants' motion plaintiff's claims.<sup>1</sup> Specifically, the Court dismisses Count V (breach of fiduciary duties), Count VI (tortious interference with contract), Count VII (tortious interference with business relations), Count IX (breach of contract), and Count X (wrongful termination) as preempted by Section 301(a) of the Labor Management Relations Act ("LMRA"). See 29 U.S.C. § 185(a). The dismissal is without prejudice to plaintiff's repleading any claim, to the extent he is able, directly under Section 301(a). The Court

---

<sup>1</sup> Cestaro filed an amended complaint on 1/6/23, after defendants filed their motion to dismiss. See Amended Complaint, Dkt. 24. The Amended Complaint appears in large part identical to the initial complaint, save for some additional particularity regarding alleged damages. See Amended Complaint ¶¶ 174, 181, 183. Per the consent of both parties as communicated to the Court during a 1/10/23 teleconference, the Court treats defendants' motion to dismiss as applying to the amended complaint.

also dismisses Count III (fraud), Count IV (negligent misrepresentation), and Count VIII (prima facie tort) for failure to state a claim. However, the Court denies defendants' motion to dismiss with respect to Counts I (defamation) and Count II (defamation per se). An opinion explaining the reasoning for this order will issue in due course. The Clerk is directed to close defendants' motion to dismiss (Dkt. 16) on the docket.

SO ORDERED.

New York, NY  
January 10, 2023

  
\_\_\_\_\_  
JEB S. RAKOFF, U.S.D.J.